

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1602

INTRODUCER: Community Affairs Committee and Senator Baker

SUBJECT: Community Development Districts

DATE: March 31, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This CS broadens the authority of community development districts (CDDs) to levy fines and enforce deed restrictions even when those deed restrictions apply to property outside of the community development district. The CS also amends provisions dealing with the procedures for changing the boundaries of a CDD.

This CS substantially amends sections 190.12 and 190.046 of the Florida Statutes.

II. Present Situation:

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments.¹ Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges.² Consequently, the burden of paying for the infrastructure is

¹ Section 190.002(1)(a), F.S.

² As authorized in ss. 190.021 & 190.035, F.S.

imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located.

Section 190.012, F.S., specifies the types of infrastructure community development districts (CDDs) are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and waste water management, reclamation, and reuse; bridges or culverts; roads; street lights; parks and other outdoor recreational, cultural, and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal.³

Section 190.006, F.S., provides for the membership of the board, meetings and the electoral process for supervisors of the district. Each landowner is entitled to cast one vote per acre of land owned by him or her and located within the district for each person to be elected.

Section 190.012, F.S., empowers certain CDDs to adopt rules necessary for the district to enforce certain deed restrictions pertaining to the use and operation of real property within the district and outside the district if pursuant to an interlocal agreement under ch. 163, F.S. Section 190.012, F.S., defines "deed restrictions" as those covenants, conditions, and restrictions contained in any applicable declarations of covenants and restrictions that govern the use and operation of real property within the district and, for which, there is no homeowners' association or property owner's association having respective enforcement powers. The district may adopt by rule all or certain portions of the deed restrictions.

Deed restrictions, also known as covenants, conditions or restrictions, encumber an owner's freedom to use the land. They may be imposed on a buyer when property is sold and are included in the deed to the property. Property developers seeking to retain a certain community atmosphere often use deed restrictions. Restrictions may limit the number or types of trees, the color of a house, the size and shape of a house, and require general upkeep of the property.

In 2004, the legislature passed CS/CS/SB 2984 which established that the only CDDs eligible to use the provisions of s.192.012(4), F.S., are those in which the district was already in existence on the effective date of the subsection, or was located within a development that consists of multiple developments of regional impact and a Florida Quality Development. These situations applied uniquely to The Villages and a development called The Meadow in Pasco County.

III. Effect of Proposed Changes:

Section 1 of the CS revises deed restriction enforcement rulemaking authority of boards of directors of CDDs under s. 190.012, F.S., in a manner that expands their powers, and the powers of homeowner's associations (HOAs), over real property whether within or outside the CDD's geographic limits subject to an interlocal agreement with another district, or the consent of the county or municipality in the area that enforcement is to occur.

³ However, this section also clarifies that CDDs remain subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies, and special districts.

The expansion of CDD rulemaking and enforcement authority extends to include residents who live outside of the geographic boundaries of the CDD. These residents can potentially become subject to a variety of rules and enforcements without representation on the CDD board and without reaping any of the benefits or services that are provided by the CDD to the residents who reside within the geographic boundaries of the CDD.

Specifically, the CDD may adopt by rule all or certain portions of deed restrictions that:

- Relate to limitations or prohibitions, compliance mechanisms, or enforcement remedies that apply to external appearances or uses and are deemed by the CDD to be generally beneficial for the CDD's landowners and for which enforcement by the CDD is appropriate, as determined by the CDD's board of supervisors; or
- Are consistent with the requirements of a development order or regulatory agency permit.

The board may vote to adopt rules only when all of the following conditions exist:

- The CDD was in existence on June 23, 2004, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development.
- For residential districts, the majority of the CDD board has been elected by qualified electors pursuant to the provisions of s. 190.006.
- The declarant (HOA, CDD or any special district) in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted. A memorandum of the agreement shall be recorded in the public records.
- For residential districts, less than 25 percent of residential units are in a homeowners' association.

The CS deletes the restriction that the CDD board may only vote to adopt rules relevant to the provisions above if the CDD's geographic area contains no HOAs as defined in s. 720.301(9).

The CS also expands the definition of "deed restrictions" to include compliance mechanisms and enforcement remedies contained in any applicable declaration of covenants and restrictions, including those of an HOA whose board is under member control, that govern the use and operation of real property. The scope of the deed restrictions is further expanded because they would not be limited to restrictions within the district.

The terms "compliance mechanisms" and "enforcement remedies" are often applied by HOAs and CDDs in the form of penalties or special assessments. A parcel owner's failure to comply can result in a lien being placed against the parcel.

Section 2 amends s. 190.046, F.S., to allow a landowner to petition to contract or expand the boundaries of a CDD. The CS specifies that the petition filing fee is paid to:

- the county if the CDD or land to be added or deleted from the district is located within an unincorporated area, or
- the municipality if the district or the land to be added or deleted is located within an incorporated area.

The filing fee must also be paid to each municipality contiguous with or contain all or a portion of land within, added to, or deleted from the external boundaries of the district. A copy of the petition shall be submitted to each of the entities entitled to receive the filing fee.

The CS deletes the provision in existing law that requires a rule amending the district boundary to have written consent of all the landowners whose land is to be added to or deleted from the district.

The amendment adds the language “net” cumulative basis to the way district boundaries shall be assessed.

The amendment states that petitions to amend the boundary of a CDD shall include only:

- a description of the external boundaries;
- a map of the proposed district showing water, sewer, and outfall;
- proposed time-table and costs for district services;
- designation of the future land uses;
- a statement of estimated regulatory costs; and
- consent of the landowners as demonstrated by the filing of the petition by the district board of supervisors but written consent must be obtained from any landowner whose land is to be added or deleted from the district.

The amendment requires that when CDDs petition to merge with each other their petitions must include the elements required to create a CDD and be evaluated using the criteria used when establishing a CDD. The filing fee would be the same. The petition must state whether a new district will be established or one district will be the surviving district. The amendment deletes language that would require CDDs that merge to hold a public hearing. The amendment specifies that the remaining CDD is still obligated to creditors. Any existing claim, pending action, or proceeding by against a CDD can continue as if the merger had not occurred.

Section 3 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The expansion of CDD rulemaking and enforcement authority could potentially create situations where an individual who resides outside the geographic boundaries of the CDD is subjected to financial sanctions for failure to comply with the application of expanded deed restrictions including purely aesthetic restrictions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 24, 2009:

The CS adds the requirement that the CDD board may vote to adopt rules that relate to limitations, prohibitions, compliance mechanisms, or enforcement remedies for residential districts when less than 25 percent of the residential units are in a homeowners' association.

The amendment adds the language “net” cumulative basis to the way district boundaries shall be assessed.

The amendment states that petitions to amend the boundary of a CDD shall include only:

- a description of the external boundaries;
- a map of the proposed district showing water, sewer, and outfall;
- the proposed time-table and costs for district services;
- designation of the future land uses;
- a statement of estimated regulatory costs; and
- consent of the landowners as demonstrated by the filing of the petition by the district board of supervisors but written consent must be obtained from any landowner whose land is to be added or deleted from the district.

The amendment requires that when CDDs petition to merge with each other their petitions must include the elements required to create a CDD and be evaluated using the criteria used when establishing a CDD. The filing fee would be the same. The petition must state whether a new district will be established or one district will be the surviving district. The amendment deletes language that would require CDDs that merge to hold a public hearing. The amendment specifies that the remaining CDD is still obligated to creditors. Any existing claim, pending action, or proceeding by or against a CDD can continue as if the merger had not occurred.

B. Amendments:

None.